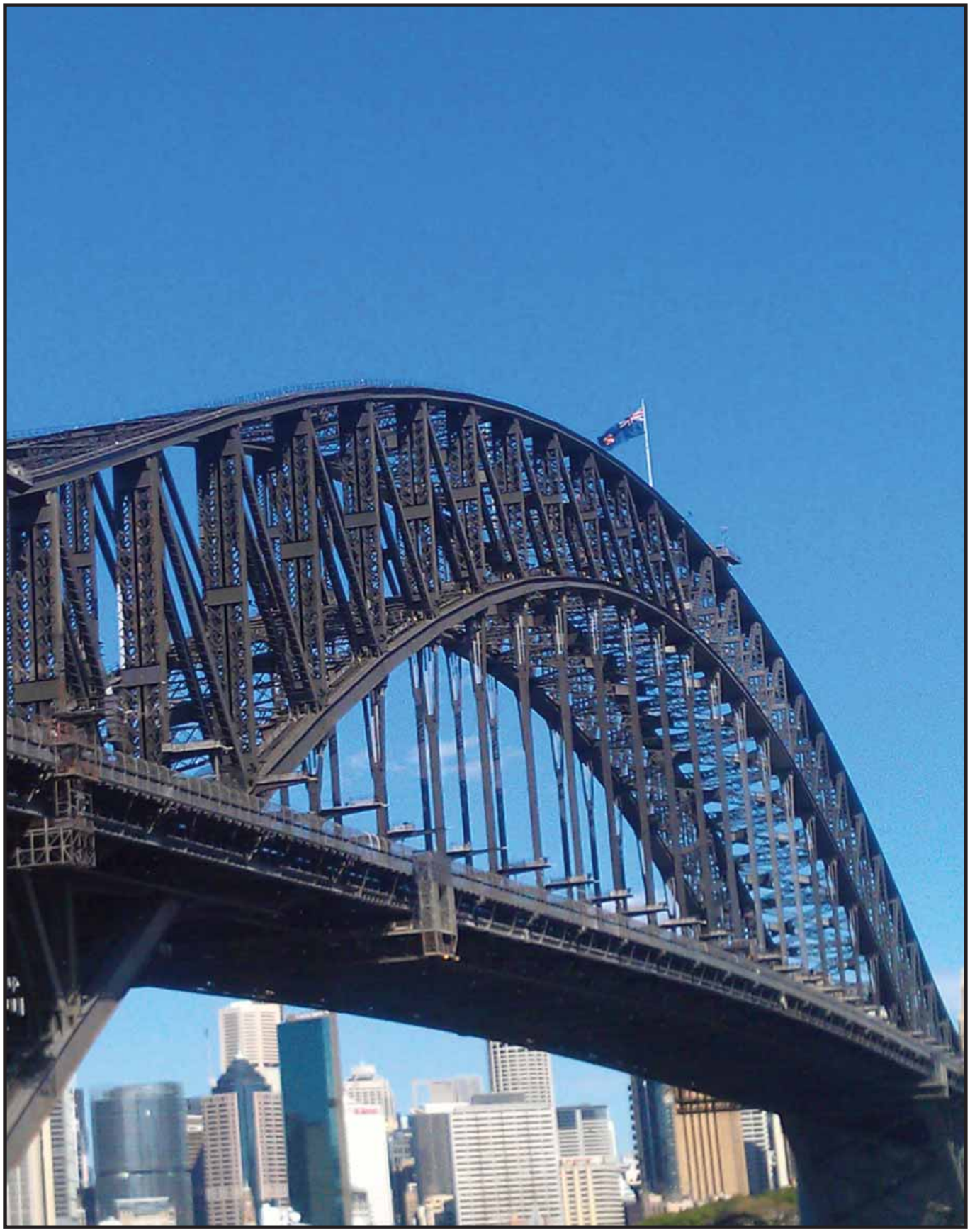

The Commercial Law Association of Australia Ltd

ACN 001 290 115

Annual Report 2019

Building a bridge between commerce and law

The Commercial Law Association of Australia Ltd

www.cla.org.au
GPO Box 5186, Sydney, NSW 2001
(02) 9979 1364

Board of Directors as at 31 December, 2019

Norman Donato, President
James Biady, Vice-President
Stephen Lamy, Treasurer
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Edmund Finnane
Sally Moten
Sarah Hill
Professor Gerard Ryan

Registered Office

Level 2, 44 Miller Street, North Sydney, NSW 2060

Chief Executive Officer

Max Wilson BA, Grad Cert Management Communication, AFIMA. Email: maxwilson@cla.org.au

Member Services

Elizabeth Wilson. Email: memberservices@cla.org.au

Commercial Law Quarterly Editors

Dr Gregory Tolhurst LLM (Syd)
Professor Elisabeth Peden SC, BA Hons, LLB Hons (Syd), PHD (Cantab)

Cover picture by Tony Dreise

Thank you to all those who have supported us throughout the year

President and Directors' Report

2019: YEAR IN REVIEW

As another year comes to an end it is my pleasure to present this report on the activities of the Commercial Law Association of Australia (**CLA**) to its members on behalf of the Directors.

2019 was another very solid year for the CLA, filled to expert speakers and the State Library of NSW, a wonderful venue and even better than before now the renovations have been completed.

I wish to thank Max and Liz Wilson for the work they put in to making the CLA run smoothly and all my fellow board members for their contribution throughout the year.

Seminars and events

Fifteen events were held this year comprising a mixture of half-day and lunchtime seminars, master classes and a forum. I take this opportunity to particularly thank all our guest speakers. Amongst the highlights this year were:

- The June Judges series. We were particularly honoured that Her Excellency the Hon Margaret Beazley AO, QC, the Governor of NSW (pictured here with me) agreed to be one of the speakers for the series. She was joined by the Hon Justices David Hammerschlag and Nye Perram;
- Mandatory CLE seminar in late March, once again our speakers were from the Sydney Law School of the University of Notre Dame Australia;
- Dr Sheelagh McCracken, Andrew Boxall and Diccon Loxton encouraged audience participation (which they got!) in their 'Understanding chattel leases and the PPSA' master class.
- Gene Phillips discussing 'Helping litigators understand experts: how to prepare and examine them';
- 'The ethical limits of advocacy at mediation' with Robert Angyal SC (which went ahead despite the difficulties of getting to the library through the 50,000 strong climate change demonstration); and
- Professor Iain Benson hosting this year's Commercial Law Forum.

We were pleased to present our biennial property law half-day seminar and class actions half-day seminar. Martin Place Chambers very kindly supplied the speakers for the property law seminar — Andrew Pickles SC, Janet McKelvey and Scott Nash. The well-attended seminar was followed by a very lively question and answer session. 'This was a fantastic and relevant seminar — thank you to all involved,' wrote one attendee.

Phi Finney McDonald once again supported the class actions half-day. Their efforts in putting together an array of excellent speakers for us were well rewarded by the audience response. 'One of the best — very high quality.'

Jeffrey Goldberger's annual Contracts Master Class, chaired by the Hon Justice Fabian Gleeson, attracted another large and appreciative audience. The general audience feedback is best summed up by, 'The effort and preparation put into this, and the comprehensive paper, was greatly appreciated' and 'A very informative and well put together seminar. It is one of, if not, the best CPD year in year out that I attend'.

Emeritus Professor John Carter's 'Carter on Mondays' lunch-time seminars were once again among our most popular events. He was joined this year by special guests Laina Chan discussing 'Are claims under the ACL claims of last resort?' and Elisabeth Peden SC delving into 'Can an essential term be implied to complete an incomplete contract?'. Professor Carter and Elisabeth Peden also joined Dr John Eldridge and Professor Barbara McDonald for the 'Contract provisions not to be taken for granted' half-day seminar. One attendee spoke for most of the audience when he said, 'The speakers were learned in the topics they delivered and as usual were very engaging. I thoroughly enjoyed the presentation'.

Major sponsor

Spicers Retreats, again very generously, offered a two-day escape as a membership prize. Congratulations to Dr Sheelagh McCracken and Michela Gallimore for winning a stay at Spicers Hunter Valley and Spicers Balfour Hotel respectively in our membership draws.

Financial update

The CLA ended the year with a small profit of $9,537, demonstrating once again the appeal of our seminars to attendees. To view the audited reports for this year, please visit our website. A comprehensive list of our activities and photos of events throughout the year are featured in the following pages.

I look forward to seeing you at future events, particularly as we will be celebrating our 55th anniversary in 2020.

Norman Donato,
President

2019 Seminar Program

HALFDAY SEMINAR

Class actions — Different perspectives

8 March 2019

The Hon Justice Brigitte Markovic, Odette McDonald, Ben Phi, Tim Finney, Emily Dewberry, Mattew Kennedy, Jason Betts, Elizabeth Collins SC, Matt Corrigan, Andrew Dawson

Proudly supported by Phi Finney McDonald

LUNCHTIME SEMINAR

Helping litigators understand experts. How to prepare and examine them

8 March, 2019

Gene Phillips, Robert Johnston

CARTER ON MONDAYS

What's been happening with contract and the ACL? Are claims under the ACL claims of last resort?

18 March, 2019

Emeritus Professor John Carter, Laina Chan, Hon Kevin Lindgren AM, QC

MASTER CLASS

Goldberger on contracts

22 March, 2019

Jeffrey Goldberger, Hon Justice Fabian Gleeson

HALFDAY SEMINAR

Mandatory CLE seminar
29 March 2019
Professor Gerard Ryan, Prasan Ulluwishewa, Kyle Kutasi, Francisco Esparraga
Proudly supported by the University of Notre Dame Australia

CARTER ON MONDAYS

Loss of chance damages: what do the recent cases say?
13 May, 2019
Emeritus Professor John Carter

THE JUNE JUDGES SERIES

The unwisdom of commercial arbitration
14 June, 2019
The Hon Justice David Hammerschlag

The interface of public law and corporations law in the light of the findings of the Royal Commission
21 June, 2019
Her Excellency the Hon Margaret Beazley AO QC, Governor of NSW

The ordinary reasonable consumer in misleading or deceptive conduct cases
28 June, 2019
The Hon Justice Nye Perram

HALFDAY SEMINAR

The current (and serious) property law issues facing your clients
26 July 2019
Andrew Pickles SC, Janet McKelvey, Scott Nash
Proudly supported by Martin Place Chambers

HALFDAY SEMINAR

Contract provisions not to be taken for granted
30 August, 2019
Emeritus Professor John Carter, Elisabeth Peden SC, Dr John Eldridge, Professor Barbara McDonald

LUNCHTIME SEMINAR

The ethical limits of advocacy at mediation
20 September, 2019
Robert Angyal SC

MASTER CLASS

Understanding chattel leases and the PPSA
25 October, 2019
Diccon Loxton, Dr Sheelagh McCracken, Andrew Boxall

COMMERCIAL LAW FORUM

Separation of techniques and purposes: why it's bad for law, business and culture
30 October, 2019
Professor Iain Benson

CARTER ON MONDAYS

Can an essential term be implied to complete an incomplete contract?
4 November, 2019
Emeritus Professor John Carter, Elisabeth Peden SC

Seen at the seminars

Current Board of Directors

Norman Donato BEc, LLB, LLM, FCLA

Norman is a partner at Bartier Perry. He has practised since his admission in 1987 in corporate finance and corporate commercial law. His qualifications include Bachelor degrees in Law and Economics, as well as a Master of Laws. Norman has extensive corporate and finance experience obtained from advising national and international clients including government bodies, major banks, public companies, SMEs and entrepreneurs. He is associated with a number of industry bodies. Norman was appointed to the board in 2008 and has been the President of the CLA since 2015.

James Biady BEc, LLB, Accredited Specialist Business Law, FCLA

Jim Biady is an experienced commercial lawyer who commenced practice in 1983. He advises clients in a number of specialty areas including structuring of entities, employment law, commercial litigation, dispute resolution, sale & purchases of businesses, sale & purchases of property, wills and estates, as well as commercial leasing. He focuses on understanding each client's business and finding appropriate effective commercial solutions. Jim is a Business Law Specialist accredited by the Law Society of New South Wales. Jim was appointed to the board in 2011 and is currently the Vice-President of the Commercial Law Association.

Stephen Lamy BA, LLM, FCLA

Stephen has been a solicitor for 40 years. He had a variety of private practice positions involving commercial and revenue work before moving in-house in 1990. Stephen's corporate career has included roles with AMP and St George Bank and from 2002 to 2016 with CBA. He has had more than 25 years in funds management with an emphasis on superannuation. Stephen contracts to financial services providers. Stephen joined the CLA's board of directors in August 2002. He became President of the CLA in 2006 and served in this capacity for five years. He currently serves as Treasurer.

Stephen McMahon BComm, FCA, F Fin, FCLA

Stephen is a specialist Forensic Accountant, a fellow of the Financial Services Institute of Australia (Finsia) and a fellow of the Institute of Chartered Accountants Australia and New Zealand (CAANZ). He is a founding principal of McMahon Worth Forensic Accountants. His firm specialises in forensic and investigative accounting, litigation support, financial evaluation of insurance claims, fraud and corruption investigations, business valuations, financial due diligence along with investigating and solving complex financial and business issues which require the application of a combination of accounting, auditing and detective skills. Stephen's interests are in analysing and preparing financial information for Court, resolving claims and disputes, Commercial Law and Finance sectors. He was appointed as a Director to the CLA in 1998, has served many years as the Membership and Marketing Chairman and was awarded Life Membership in 2018.

Edmund Finnane BA and LLB (ANU), LLM (Corporate & Commercial Law) (UNSW), FCLA

Edmund Finnane has practised as a barrister in NSW since 1997. He has a wide ranging practice in commercial law and equity. Edmund is particularly interested in corporate insolvency, mortgage law, equity and contract law. He has delivered seminars to members of the legal profession on areas including commercial damages, equity, insolvency law and de facto relationships law. Edmund is co-author of two books: *Equity Practice and Precedents* (2nd Edition) (Finnane, Newton and Wood, Thomson Reuters, Sydney, 2019), (as well as the first edition of that book published in 2008) and *Pleading Precedents* (Azize, El Khoury and Finnane [6th Ed], Thomson Reuters, Sydney, 2009). Since 2009 he has been author of the annotations in the Thomson Reuters annual and online publication, *Corporatons Legislation with Annotations*. In 2018, Edmund was appointed as general editor of the *Company and Securities Law Journal* (Thomson Reuters).

Sally Moten LLB (Hons) (USyd), BCom (USyd)

Sally Moten was admitted as a Solicitor in NSW in 2005. She has a Bachelor of Laws (First Class Hons), and Bachelor of Commerce, both from the University of Sydney. Sally is a partner at Lander & Rogers who specialises in all aspects of employment and safety law. Prior to this, Sally spent several years working in commercial laws firms Blake Dawson (now Ashurst) and Henry Davis York (merged with Norton Rose Fulbright). She also spent time working in-house at a large NSW Government Agency. Sally provides advice on matters ranging from performance management and disciplinary matters to defending unfair dismissal and discrimination claims, managing industrial disputes, advising on restructuring of organisations, defending WHS prosecutions and providing WHS advice on compliance and safety legislation. Sally joined the CLA's Board of Directors in 2016.

Sarah Hill BA/LLB (Hons) (USyd)

Sarah Hill has practised as a barrister in NSW since 2004. She holds a BA/LLB (Hons) from the University of Sydney. She has a broad ranging equity and commercial practice covering such areas of the law as contracts, corporate law, insolvency, equity, property, trusts and wills and estates. Sarah has given presentations in many of these areas at industry conferences and to various legal bodies. She was admitted to the Supreme Court of NSW, the Federal Court of Australia and the High Court of Australia in 2003. Sarah was appointed to the Board of Directors of the CLA in 2018 and is currently serving as the chair of the Publications Committee.

Professor Gerard Ryan BEc (Hons) (USyd), LLB (Hons) (USyd), GradDipLP (UTS), LLM (Hons) (USyd), GCUT (UNDA)

Gerard is a Professor of Law at the University of Notre Dame Australia (UNDA). He graduated from the University of Sydney with First Class Honours in Economics and Law. His Masters of Law included an Honours thesis in competition law. Gerard was admitted as a solicitor in 1991. He was a partner in a large city commercial law firm, specialising in commercial work in the energy sector (including electricity derivative transactions, large energy infrastructure projects and regulatory advice). From 2008 to 2012 he was Dean of the School of Law, Sydney at UNDA. His main areas of teaching are contracts, commercial practice, commercial drafting, ethics, corporations law and property. He has supervised research students in contracts, competition law and other areas. Gerard and his UNDA colleagues have conducted the CLA's annual CPD presentation on ethics, practice management and professional skills since March 2011. He joined the CLA Board of Directors in 2018.

Standing Committees as at December 31, 2019

MEMBERSHIP & MARKETING COMMITTEE

Stephen McMahon
Jim Biady
Max Wilson

An important element of the Association's image is to ensure that marketing assists in attracting legal practitioners and those involved in commerce to our Association's activities. By promoting our seminar programs and other programs we aim to encourage people to join the Association. Listening to our members and reacting to their needs is also very important in maintaining membership.

PUBLICATIONS COMMITTEE

Sarah Hill
Professor Elisabeth Peden
Dr Gregory Tolhurst
Max Wilson

The *Commercial Law Quarterly* is the official publication of the Commercial Law Association. The journal has been published continuously for 30 years and is a highly respected reference material for those involved with the practice of law. All manuscripts submitted to the *Quarterly* are refereed prior to acceptance for publication. The journal contains articles and news about commercial law issues from around Australia and overseas. One of the main objectives of the Commercial Law Association is to make business people aware of the constant changes to the law and make law-makers aware of the constantly changing business environment. Through the publication of the *Commercial Law Quarterly*, the Association aims to:

- encourage members of the commercial and corporate community and the legal profession to examine and consider jointly commercial law usages and practices;
- disseminate information on concerning new legislation proposed or enacted by the Parliaments of Australia or overseas relating to commercial or corporate law usages and practices.

All copies of the *Commercial Law Quarterly* from 1986 to the present day are available online. There is also a number of copies of *The Bulletin* (CLQ's predecessor) in the library, but we are still seeking some issues. The library is available on our website.
The Editors welcome the submission of notes to cases and issues of law reform and longer articles.